

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

November 26, 2013 at 9:32 A.M.

PLEASE TAKE NOTE: Matters appearing on this calendar in In re ZF in Liquidation, LLC, case no. 12-37961-B-11 (matters 11-13) will not be called for hearing before 11:00 a.m.

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| 1. | <u>11-37711</u> -B-7 DELANO RETAIL PARTNERS,
<u>12-2686</u> LLC EAN-1
C&S WHOLESALE GROCERS, INC. V.
DELANO ET AL | MOTION TO DISMISS ADVERSARY
PROCEEDING AND/OR MOTION FOR
ABSTENTION
10-25-13 [<u>73</u>] |
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Tentative Ruling: The motion is granted pursuant to Fed R. Civ. P. 7012, incorporating Fed. R. Civ. P. 12(b)(1). The adversary proceeding is dismissed. To the extent that the court has ordered this adversary proceeding consolidated with adversary proceeding no. 13-2250-B, the order is terminated, based on the court's lack of subject matter jurisdiction over this adversary proceeding. Because the court lacks subject matter jurisdiction to adjudicate this adversary proceeding, it declines to reach the movant's request that the court abstain from deciding the adversary proceeding. Except as so ordered, the motion is denied.

Defendants Harley Delano, Dennis Delano, 2040 Farifax, Inc. and Joseph Neri (collectively, the "Defendants") request that the court dismiss the adversary proceeding pursuant to Fed. R. Bankr. P. 7012, incorporating Fed. R. Civ. P. 12(b)(1).

The basis for the court's jurisdiction over this matter is found in 28 U.S.C. § 1334, which provides, in relevant part

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C. § 1334(b) (emphasis added).

"[C]laims that arise under or in Title 11 are deemed to be 'core' proceedings, while claims that are related to Title 11 are 'noncore' proceedings." In re Harris Pine Mills, 44 F.3d 1431, 1435 (9th Cir. 1995). Claims that arise under Title 11 are those that involve a cause

of action created or determined by a statutory provision of Title 11. Id., citing In re Wood, 825 F.2d 90, 96-97 (5th Cir. 1987). Claims that arise in Title 11 are " 'administrative' matters that arise solely in bankruptcy cases . . . [They] are not based on any right expressly created by Title 11, but nevertheless, would have no existence outside of the bankruptcy." Wood, 825 F.2d at 97.

Claims that are "related to" a case under title 11, are, generally speaking, those claims that are owned by the debtor at the time the petition is filed and that become part of the estate pursuant to 11 U.S.C. § 541(a). They may also include proceedings that take place between third parties. See 1 Lawrence P. King, et al., Collier on Bankruptcy, § 3.01[3][c] (15th Ed. rev. 2010). The Ninth Circuit has concluded that a "related" proceeding is largely synonymous with a "non-core" proceeding. See Benedor Corporation v. Conejo Enterprises, Inc. (In re Conejo Enterprises, Inc.), 71 F.3d 1460, 1464, n.3 (9th Cir. 1995). A non-core proceeding " 'does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy'" In re Harris Pine Mills, 44 F.3d at 1435 (quoting Wood, 825 F.2d at 96-97). A bankruptcy court has jurisdiction over a related proceeding when "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984). See also In re Feitz, 852 F.2d 455, 457 (9th Cir. 1988).

The complaint in this adversary proceeding alleges five claims for relief:

- 1.) Avoidance and recovery of intentional fraudulent transfer pursuant to California Civil Code § 3439.04(a)(1), against all defendants.
- 2.) Avoidance and recovery of constructive fraudulent transfer pursuant to California Civil Code §§ 3439.04(a)(2), 3439.05, against all defendants.
- 3.) Common law fraudulent conveyance, against all defendants.
- 4.) Civil conspiracy, against all defendants.
- 5.) Aiding and abetting, against all defendants.

The claims for relief are not core matters. They are not claims created by the Bankruptcy Code, nor are they matters which are not created by the Bankruptcy Code but would have no existence outside of a bankruptcy case.

The claims for relief are not non-core matters that are included within the court's "related to" jurisdiction. They are claims asserted by plaintiff C&S Wholesale Grocers, Inc. ("CSWG"), solely in its capacity as a creditor of the debtor. The debtor is not a party to the adversary proceeding. Any damages awarded in the adversary proceeding would flow solely to CSWG. As a result the outcome of the adversary proceeding would have no effect on the estate of the debtor being administered in bankruptcy.

Because the adversary proceeding is neither a core nor non-core proceeding, the adversary proceeding is dismissed pursuant to Fed. R. Civ. P. 12(b)(1). Because the court does not have subject matter jurisdiction over the action, it does not reach the Defendants' request

for the court to abstain from deciding the proceeding.

The court makes no finding regarding whether the Defendants or any of them have waived the right to bring claims against the debtor. The debtor is not a party to this proceeding, and the court need not determine the issue of waiver of claims in order to determine whether it has subject matter jurisdiction over the proceeding. Furthermore, the issue is not ripe for adjudication; the defendants have yet to raise any claim against the estate of the debtor, whether by cross-claim in this adversary proceeding or counterclaim in associated adversary proceeding no. 13-2250-B.

The court will issue a minute order.

2. [11-37711](#)-B-7 DELANO RETAIL PARTNERS, MOTION TO MODIFY SCHEDULING
[12-2686](#) LLC DBR-2 ORDER
C&S WHOLESALE GROCERS, INC. V. 10-29-13 [[78](#)]
DELANO ET AL

Tentative Ruling: The motion is dismissed.

The court does not have subject matter jurisdiction over this adversary proceeding, for the reasons set forth in the court's ruling granting the defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) elsewhere on this calendar.

The court will issue a minute order.

3. [11-37711](#)-B-7 DELANO RETAIL PARTNERS, MOTION TO COMPEL AND/OR MOTION
[12-2686](#) LLC DBR-3 FOR PROTECTIVE ORDER
C&S WHOLESALE GROCERS, INC. V. 11-12-13 [[90](#)]
DELANO ET AL

Tentative Ruling: The motion is dismissed.

The court does not have subject matter jurisdiction over this adversary proceeding, for the reasons set forth in the court's ruling granting the defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) elsewhere on this calendar.

The court will issue a minute order.

4. [11-37711](#)-B-7 DELANO RETAIL PARTNERS, CONTINUED MOTION TO DISMISS
[12-2686](#) LLC HKS-1 ADVERSARY PROCEEDING
C&S WHOLESALE GROCERS, INC. V. 8-19-13 [[53](#)]
DELANO ET AL

Tentative Ruling: The motion is dismissed.

The court does not have subject matter jurisdiction over this adversary proceeding, for the reasons set forth in the court's ruling granting the defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) elsewhere on this calendar. Because the court does not have subject matter jurisdiction, it declines to reach the issue of whether the complaint states a claim upon which relief may be granted.

The court will issue a minute order.

5. [11-37711](#)-B-7 DELANO RETAIL PARTNERS, MOTION TO MODIFY SCHEDULING
[13-2250](#) LLC DBR-2 ORDER
C&S WHOLESALE GROCERS, INC. V. 10-29-13 [[39](#)]
DELANO ET AL

Tentative Ruling: The defendants' opposition is overruled. The motion is granted. The court's scheduling order, entered on September 19, 2013, in formerly consolidated adversary proceeding 12-2686-B (the "Scheduling Order"), is modified as follows: 1.) The last date to hear motions to amend the pleadings in this adversary proceeding, no. 13-2250-B, is extended from November 26, 2013, to and including January 28, 2014; 2.) the last date to hear motions asserting a failure to state a claim upon which relief may be granted is extended from November 26, 2013, through and including March 11, 2014. The terms of the Scheduling Order, as modified herein, remain in full force and effect for the purposes of this adversary proceeding. Except as so ordered, the motion is denied.

The standard for modification of a scheduling order focuses on the diligence of the party seeking the amendment and the moving parties reasons for seeking the modification. Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). The moving party must show that the scheduling order cannot reasonably be met despite the diligence of the party seeking the extension. "[C]arelessness is not compatible with a finding of diligence and offers no reason for a granting of relief." Id.

"[T]o demonstrate diligence under Rule 16's "good cause" standard, the movant may be required to show the following: (1) that she was diligent in assisting the Court in creating a workable Rule 16 order, (2) that her noncompliance with a Rule 16 deadline occurred or will occur, notwithstanding her diligent efforts to comply, because of the development of matters which could not have been reasonably foreseen or anticipated at the time of the Rule 16 scheduling conference, and (3)

that she was diligent in seeking amendment of the Rule 16 order, once it became apparent that she could not comply with the order." Jackson v. Laureate, Inc., 186 F.R.D. 605, 608 (E.D. Cal. 1999) (J. Burrell) (citations omitted). In addition, the Scheduling Order in this case states that requests for relief from or modification of the Scheduling Order are not favored and will ordinarily be denied unless the requesting party makes a strong showing of diligence" in complying with the Scheduling Order.

The court finds that the movant, plaintiff C&S Wholesale Grocers, Inc. ("CSWG") has made the requisite showing of diligence. The Scheduling Order was entered on September 19, 2013. At that time, CSWG had already served requests for production on defendant Joseph Neri six days earlier, on September 13, 2013. CSWG did not delay in seeking discovery from the defendants from the time of entry of the Scheduling Order. CSWG also received its requested documents from Neri on October 25, 2013, in close proximity to the time that CSWG became aware of two previously undisclosed computer servers used by defendants Harley Delano and Dennis Delano. The court agrees with CSWG that, considering the time that it became aware of information it believed could result in an amendment of the complaint, that it had insufficient time to prepare an amended complaint and to prepare and file a motion to amend the pleadings by the deadline set forth in the Scheduling Order. The court finds it appropriate in this instance to extend the deadline to end of January , 2014, considering the upcoming holiday season, the fact that this department holds fewer regularly scheduled law and motion calendars during that time, and the fact that one of the defendants will be taking an extended holiday out of the state during that time.

The defendants have also not shown that they will be prejudiced if the Scheduling Order is modified. The defendants' argument that they will be prejudiced assumes that Neri will prevail in his motion to dismiss this adversary proceeding under Fed. R. Civ. P. 12(b)(6), a matter which has yet to be finally resolved.

The court will issue a minute order.

6. [11-37711](#)-B-7 DELANO RETAIL PARTNERS, MOTION TO COMPEL AND/OR MOTION
[13-2250](#) LLC DBR-3 FOR PROTECTIVE ORDER
C&S WHOLESALE GROCERS, INC. V. 11-12-13 [[44](#)]
DELANO ET AL

Tentative Ruling: The opposition filed by the defendants is sustained in part. The motion is dismissed. The plaintiff's request for an award of attorney's fees is denied. Defendants is awarded \$2,800.00 in attorney's fees related to opposition of the motion, which fees will be added or subtracted from a final judgment. Except as so ordered, the motion is denied.

Neither the plaintiff's motion to compel nor the plaintiff's request for a protective order is ripe for adjudication.

As for the motion to compel, plaintiff requests that defendant Joseph Neri ("Neri") be required to "sit for a deposition after December 1

[2013], per the court's Scheduling Order." However, the plaintiff has presented no evidence that it has noticed Neri for a deposition after December 1, 2013; there is therefore no evidence that Neri has refused to participate in a deposition after December 1, 2013, such that an order compelling him to participate is required.

Nor is the plaintiff's request for a protective order preventing the defendants from engaging in further proceedings to take the deposition of non-party Byron Lovell based on a notice of deposition served on the plaintiff ripe for adjudication. As the plaintiff itself points out, the notice of deposition is ineffective as to Mr. Lovell. As Mr. Lovell is a non-party residing in the United Kingdom, his appearance for a deposition can only be required via a subpoena and defendants' compliance with 28 U.S.C. § 1783. There is no evidence that the defendants have yet to seek Mr. Lovell's deposition in a manner that would be effective to require his appearance. As a result, there is no need for a court order pursuant to Fed. R. Civ. P. 26(c) to protect Mr. Lovell from potential annoyance, embarrassment, oppression or undue burden or expense.

The court will issue a minute order.

7. [11-37711](#)-B-7 DELANO RETAIL PARTNERS, CONTINUED MOTION TO DISMISS
[13-2250](#) LLC HKS-1 ADVERSARY PROCEEDING
C&S WHOLESALE GROCERS, INC. V. 8-19-13 [[22](#)]
DELANO ET AL

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is deemed submitted on the papers. The court will issue a written disposition and order.

8. [11-48519](#)-B-11 VICTOR HANNAN MOTION TO DISMISS CASE AND/OR
PD-1 MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7
10-14-13 [[156](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is dismissed.

This motion seeking dismissal or conversion of the debtor's Chapter 11 case is moot. The bankruptcy case was converted to one under chapter 7 at the debtor's request by order entered November 19, 2013 (Dkt. 170).

The court will issue a minute order.

Tentative Ruling: The opposition filed by Car Cage Motors, Inc. ("Car Cage") is sustained in part. The motion is denied.

The debtor requests that the court convert her chapter 7 case to one under chapter 13 pursuant to 11 U.S.C. § 706(a). Section 706(a) states that a debtor may convert a case to chapter 13 "at any time," if the case has not been converted under 11 U.S.C. §§ 1112, 1208 or 1307. The debtor's case has not been previously converted.

However, the debtor's right to convert to chapter 13 is not absolute. The United States Supreme Court held in Marrama v. Citizens Bank of Massachusetts, 549 U.S. 365 (2007) that a debtor who engages in bad faith conduct or an abuse of the bankruptcy process does not have an absolute right to convert, based on the broad authority granted to bankruptcy judges by 11 U.S.C. § 105(a) to take any action necessary or appropriate to prevent an abuse of process. "The important point established by Marrama is that even otherwise unqualified rights in the debtor are subject to limitation by the bankruptcy court's power under § 105(a) to police bad faith and abuse of process." In re Rosson, 545 F.3d 764, 773 n. 12 (9th Cir. 2008).

While the court does not find that the debtor in this case has engaged in deceptive or fraudulent conduct following the filing of her petition under chapter 7, as was the case for the debtor in Marrama, the court does find that the debtor has engaged in an abuse of the bankruptcy process that would continue if the debtor were permitted to convert to chapter 13.

As Car Cage points out, the debtor has filed numerous bankruptcy proceedings in this court. The court's records show that the debtor has filed eleven bankruptcy cases and four associated adversary proceedings over the past fifteen years. The debtor has filed three cases under chapter 13 since March 22, 2011. In only one of those cases, no. 11-31777-A-13J, was the debtor able to confirm a chapter 13 plan, but she defaulted under the terms of the plan within seven months of confirmation and the case was dismissed. Another case, no. 11-27027-B-13J, was dismissed due to the debtors' ineligibility for her failure to file a certificate of pre-petition credit counseling. A third case, no. 12-38022-B-13J, was dismissed for the debtor's failure to file tax documents and to make plan payments. All of the foregoing cases were filed by the debtor in pro per, and all were filed in close proximity of one another.

In the instant case, the debtor obtained a chapter 7 discharge on September 26, 2013. She filed a motion to redeem her vehicle from Car Cage, but was unsuccessful because she was unable to show that she could make the required redemption payment. She now seeks a conversion to chapter 13 to effect a rehabilitation of the debt owed to Car Cage, but considering the debtor's history of chapter 13 filings within the past three years, she has not show any evidence that this case, if converted, will conclude successfully, as opposed to simply extending the period by

which her creditors may forbear from taking action against her due to pending bankruptcy proceedings.

In addition, the court's review of the docket reveals that the debtor was not eligible to be debtor in bankruptcy when she filed this bankruptcy case, as there is no evidence on the docket that within the 180-days period ending on the date of the filing of the petition the debtor received budget and credit counseling from an approved nonprofit budget and credit counseling agency. The debtor commenced the case on April 15, 2013. Also on April 15, 2013, she filed a request for a waiver of the pre-petition credit counseling requirement pursuant to 11 U.S.C. § 109(h)(4) (Dkt. 9). That request was denied by order entered May 1, 2013 (Dkt. 23). The debtor filed a credit counseling certificate (the "Certificate") on May 14, 2013, which reflected that the debtor received credit counseling on May 7, 2013, post-petition. The post-petition credit counseling received by the debtor does not satisfy the requirements of 11 U.S.C. § 109(h)(1). The debtor is not eligible to be a debtor under Title 11. Accordingly, for the foregoing reasons, the motion is denied on the alternative ground of ineligibility to be a debtor in this case.

The court will issue a minute order.

10. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA CONTINUED MOTION TO USE CASH
KG-484 COLLATERAL
9-10-13 [[494](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is removed from the calendar, as resolved by order signed November 22, 2013, approving the amended stipulation of the parties filed on November 8, 2013 (Dkt. 593).

11. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC MOTION TO DETERMINE THE AMOUNT
FWP-101 OF THE DISPUTED SECURED CLAIM
OF B & B QUALITY FOOD PROVIDERS
11-12-13 [[2314](#)]

Tentative Ruling: This matter will not be called for hearing before 11:00 a.m.

The motion is dismissed without prejudice.

The motion is incomplete. Both the motion and the supporting declaration of Sean Harding reference a demand letter purported filed as Exhibit A to the motion, but no such exhibit appears on the docket.

The court will issue a minute order.

12. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC MOTION TO COMPROMISE
FWP-102 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ZACKY AND SONS
POULTRY, LLC
11-12-13 [[2318](#)]

Tentative Ruling: This matter will not be called for hearing before 11:00 a.m.

The motion is dismissed without prejudice.

The motion is not ripe for adjudication. The debtor seeks approval of a compromise of an alleged dispute between the debtor and Zacky and Sons Poultry, LLC ("ZSP"). However, the debtor has presented no evidence that ZSP has actually agreed to a compromise on the terms described in the motion. There is, for example, no copy of an executed settlement agreement or a declaration from a representative of ZSP that ZSP consents to the terms of the settlement. The only evidence presented by the debtor that ZSP agrees to the settlement is hearsay evidence contained the supporting declaration of Sean Harding (Dkt. 2320), Senior Vice President of Restructuring for the debtor.

The court will issue a minute order.

13. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC MOTION FOR ENTRY OF DEFAULT
[13-2256](#) FWP-1 JUDGMENT
ZF IN LIQUIDATION, LLC V. 10-29-13 [[26](#)]
IDAHO AVENUE LAND COMPANY ET

Tentative Ruling: This matter will not be called for hearing before 11:00 a.m.

The motion is granted. The plaintiff, debtor ZF in Liquidation LLC, shall have judgment against defendant Idaho Avenue Land Company ("Idaho Avenue") on the first and second claims for relief alleged in the complaint (Dkt. 1). The debtor shall have judgment that the deed of trust for the benefit of Idaho Avenue recorded in Kings County, document number 0608952 is null and void and of no further force or effect. The debtor shall also have judgment that Idaho Avenue has no lien on or claim to the secured promissory note or in the amount of \$3.5 million given to the debtor by the Robert D. Zacky and Lillian D. Zacky Trust U/D/T dated July 26, 1988 (the "Zacky Trust") as part of the sale of substantially all of the debtor's assets to the Zacky Trust. Judgment shall not be entered in the adversary proceeding until the third and fourth claims for relief against Idaho Avenue for declaratory relief and slander of title are resolved. Except as so ordered, the motion is denied.

The court finds that the debtor has in its complaint sufficiently pled its first and second claims for relief for cancellation of instrument and quiet title, respectively. "Averments in a pleading to which a

responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." Fed. R. Bankr. P. 7008(a), incorporating Fed. R. Civ. P. 8(d); Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir.1977).

The court will issue a minute order granting the motion. As stated above, judgment in favor of the debtor shall not be entered until the third and fourth claims for relief against Idaho Avenue are resolved.

14. [11-37622](#)-B-7 RUSSELL/PATRICIA HUNGATE MOTION TO EMPLOY JAMES J. BICKERTON AS SPECIAL COUNSEL
DNL-2 10-28-13 [[45](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014, the chapter 7 trustee's request to employ Law Firm of Bickerton Lee Dang and Sullivan ("BLDS") as special counsel to assist the trustee in prosecuting the Hungate v. the Law Office of David B. Rosen case no. 13-1-002146, Circuit Court of the First Circuit, State of Hawaii. BLDS' compensation will be based on the terms forth in the application. BLDS's contingent fees and costs, if any, shall be paid only pursuant to application. 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016. Except as so ordered, the motion is denied.

The court finds that BLDS is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

Counsel for the trustee shall submit an order approving employment of BLDS that conforms to the foregoing ruling.

15. [11-30525](#)-B-7 LINDA BACA MOTION TO EXTEND DEADLINE TO
SLF-3 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
10-22-13 [[99](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is removed from the calendar. The chapter 7 trustee withdrew the motion on November 15, 2013 (dkt. 114).

16. [13-32529](#)-B-7 GARY/DEBRA CAMPBELL MOTION TO ABANDON
RPH-2 11-12-13 [[37](#)]

Tentative Ruling: The motion is continued to January 14, 2013, at 9:32 a.m.

As the personal property for which the debtors seek abandonment (the "Property") is alleged to be of inconsequential value and benefit to the estate solely due to the fact that the Property is claimed as exempt, the court continues the motion to a date after the period for objecting to the debtors' claims of exemption pursuant to Fed. R. Bankr. P. 4003(b)(1) has expired.

The court will issue a minute order.

17. [12-36730](#)-B-7 LARRY BOHRINGER MOTION FOR COMPENSATION BY THE
ADJ-3 LAW OFFICE OF JOHNSTON &
JOHNSTON LAW CORP. FOR ANTHONY
D. JOHNSTON, TRUSTEE'S
ATTORNEY(S), FEES: \$1,375.00,
EXPENSES: \$52.94
10-30-13 [[47](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

18. [12-36033](#)-B-7 DOROTHY MCLAURIN MOTION TO AVOID LIEN OF
CAH-3 AMERICAN EXPRESS CENTURION BANK
10-17-13 [[29](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A) subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of American Express Centurion Bank, recorded in the official records of Sacramento County, Book 20120125, Page 1122 is avoided as against the real property located at 3468 Sun Maiden Way, Antelope, California.

The subject real property has a value of \$170,000.00 as of the date of the petition. The unavoidable liens total \$209,498.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which she exempted \$1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

19. [13-24339](#)-B-7 KAI/STEPHANIE BRESSER
PA-7

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH VIAQUEST, INC.
AND COSTCO WHOLESALE
CORPORATION AND/OR MOTION FOR
COMPENSATION FOR JOHN BELL,
CHAPTER 7 TRUSTEE(S), FEES:
\$390,000.00, EXPENSES:
\$28,905.24
10-29-13 [[39](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The Chapter 7 trustee is authorized to enter into the Settlement Agreement and General Release submitted as Exhibit "2" to the motion (Dkt. 42 at 9) (the "Agreement"). The trustee is also authorized to distribute \$418,905.24 of the proceeds received pursuant to the Agreement to Rouda, Feder, Tietjen & McGuinn ("RFTM") in full satisfaction of RFTM's secured claim filed in the bankruptcy case. Except as so ordered, the motion is denied.

The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

The trustee asserts the compromise is fair and equitable. By entering into the Agreement, the trustee spares the estate the time and expense of complex and difficult litigation in which the likelihood of success for the estate is uncertain. Accordingly, the court finds that the trustee has carried the burden of persuading the court that the proposed compromises are fair and equitable, and the motion is granted.

The court authorizes the distribution of a portion of the settlement proceeds to RFTM as a distribution on RFTM's filed secured claim, based on an attorney's charging lien on the proceeds of the settlement.

Counsel for the trustee shall submit an order consistent with the foregoing ruling.

Disposition Without Oral Argument: The motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the instant case is dismissed. Pursuant to 11 U.S.C. § 109(g)(1), the debtor may not commence a bankruptcy case for a period of 180 days after entry of the order dismissing this case. Except as so ordered, the motion is denied.

By this motion, creditors JPMorgan Chase Bank, N.A. and CitiMortgage, Inc. (collectively, the "Creditors") seek dismissal of this chapter 11 case or, alternatively, conversion of this chapter 11 case to one under chapter 7. Pursuant to 11 U.S.C. § 1112(b)(1), the court shall convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, for cause. Section 1112(b) limits the foregoing directive in several ways:

First, under section 1112(b)(1), the court shall not convert or dismiss the case if the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate. Section 1104(a)(2) states that "at any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor." 11 U.S.C. § 1104(a)(2).

Second, under section 1112(b)(2), the court may not convert or dismiss the case, even if the movant establishes cause, if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes the requirements of sections 1112(b)(2)(A) and (B). Specifically, the debtor or any other opposing party in interest must establish that:

(A) There is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

(B) The grounds for converting or dismissing the case include an act or omission of the debtor other than substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation - (i) for which there exists a reasonable justification for the act or omission; and (ii) that will be cured within a reasonable period of time fixed by the court.

Section 1112(b) (4) sets forth a non-exhaustive list of examples of "cause." If one of the enumerated examples of cause set forth in section 1112(b) (4) is proven by the movant by a preponderance of the evidence, the court must find that the movant has established cause. 7-1112 Collier on Bankruptcy § 1112.04 (16th ed. 2013).

The court finds, for the reasons stated in the motion, that the Creditors have established cause for dismissal or conversion under 11 U.S.C. §§ 1112(b) (4) (A), (D), (E), (F), and (J) .

The court further finds that the debtor has not established that, even though cause exists, the case should not be dismissed or converted. The debtor has failed to file any response to the Creditors' motion. In fact, the only significant activity undertaken by the debtor since the filing of this motion has been the filing of monthly operating reports for the months of September and October 2013. The court notes that the October 2013 monthly operating report shows a negative cash flow of \$1,960.00. Therefore, the debtor has failed to meet its burden under sections 1112(b) (2) (A) and (B) .

The court makes no finding of unusual circumstances that would establish that dismissing or converting this case would not be in the best interests of creditors and the estate.

The court finds that dismissal of this case is in the best interest of creditors and the estate. As set forth in the motion, the estate appears to contain no assets that could be liquidated for the benefit of unsecured creditors. The court further finds that the cause shown in the motion, coupled with the debtor's failure to respond to the motion, constitutes willful failure to abide by orders of the court and willful failure to appear before the court in proper prosecution of the case.

The court will issue a minute order.

21.	13-29831 -B-7	MICHAEL HEALY	MOTION FOR ENTRY OF DEFAULT
	13-2258	UST-1	JUDGMENT
	U.S. TRUSTEE V. HEALY		10-23-13 [13]

Tentative Ruling: This is a properly filed motion under Local Bankruptcy Rule 9014-1(f) (1). Because the debtor/defendant is in pro se, the court issues the following abbreviated tentative ruling.

The motion is granted in part. Judgment will be entered in favor of the plaintiff August B. Landis, Acting United States Trustee for the Eastern District of California (the "Plaintiff"), (A) barring the defendant Michael Healy (the "Defendant") from filing, or causing to be filed, any subsequent petition for relief under title 11 of the United States Code, in United States Bankruptcy Court for the Eastern District of California, for a period of one (1) year after entry of judgment in this adversary proceeding; (B) permitting the Defendant to file a petition for relief under title 11 of the United States Code after the expiration of such one-year period, only if on the date of any such future filing by the Defendant, (i) the case filing fee is paid in full with no installment payment and no waiver of the filing fee and (ii) the amount of \$1,174.00,

representing the total unpaid case filing fees in the Defendant's prior bankruptcy cases, case nos. 13-23240-C-7, 13-24481-C-13, 13-25499-C-13, and 13-29831-B-7, are paid to the Clerk of the Bankruptcy Court. The court awards no attorney's fees and costs to the Plaintiff. Except as so ordered, the motion is denied.

The Plaintiff has in its complaint sufficiently pled its cause of action for an injunction against the filing of another bankruptcy case pursuant to 11 U.S.C. §§ 105 and 349. "Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." Fed. R. Bankr. P. 7008(a), incorporating Fed. R. Civ. P. 8(d); Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir.1977).

The court will issue a minute order granting the motion. The Plaintiff shall submit a separate judgment that conforms to the court's ruling and complies with Fed. R. Bankr. P. 9021.

22. [13-31040](#)-B-11 JIM ALEXANDER
DSS-2

CONTINUED MOTION TO VALUE
COLLATERAL OF GREEN TREE
SERVICING
8-29-13 [[13](#)]

Tentative Ruling: This matter is continued to January 14, 2014 at 9:32 a.m.

23. [13-31040](#)-B-11 JIM ALEXANDER
DSS-4

CONTINUED MOTION TO VALUE
COLLATERAL OF JON AND PEGGY
SANDERS
8-29-13 [[21](#)]

Tentative Ruling: This matter is continued to January 14, 2014 at 9:32 a.m.

24. [13-29642](#)-B-7 RUSSELL/JILL TOWNE
DL-1

CONTINUED MOTION TO COMPEL
ABANDONMENT
8-15-13 [[14](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion is denied without prejudice because the debtor has not met his burden of proving that the property he seeks to have abandoned is burdensome to the estate or of inconsequential value and benefit to the estate. Pursuant to 11 U.S.C. § 554(b), "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(b). The party seeking abandonment of estate property has the burden of proof under 11 U.S.C. § 554(b). In re Viet Vu, 245 B.R. 644, 647 (9th Cir. BAP 2000).

The debtor has not carried his burden in this instance. By this motion the debtor seeks a court order compelling the chapter 7 trustee to abandon to him the estate's interest in a sole proprietorship, a fifty percent (50%) general partnership interest, and the assets associated therewith (collectively, the "Business"). However, the debtor has not provided the court with sufficient evidence regarding the value of the Business. Specifically, according to the chart that the debtor has included as part of his motion, the "customer lists" of the Business, identified on Line 24 of the debtor's amended Schedule B (Dkt. 11) as the "Book of Business", has a value of "unknown." Similarly, the debtor states in his motion and again on Line 14 of his amended Schedule B that the value of the 50% partnership interest is "unknown." Without providing the court with this information, it is impossible for it to ascertain the true value of the property that the debtor seeks to have abandoned. As such, the court cannot make a determination under 11 U.S.C. § 554(b) as to whether or not the Business is burdensome to the estate or is of inconsequential value and benefit to the estate.

The court acknowledges that the chapter 7 trustee has no opposition to this motion. However, absence of opposition does not equal entitlement to judgment. A party is not entitled to judgment simply because no one opposes. All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88, (B.A.P. 9th Cir. 2007) ("...default does not entitle a plaintiff to judgment as a matter of right or as a matter of law.")

The court will issue a minute order.

25. [13-29642](#)-B-7 RUSSELL/JILL TOWNE MOTION TO SELL
SLF-3 11-5-13 [[40](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

26. [13-32865](#)-B-7 APNA INVESTMENTS, INC., MOTION TO SELL
DNL-4 A CALIFORNIA CORPORATION 10-29-13 [[79](#)]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee is authorized to sell the estate's interest in all personal property, including furniture, equipment, and inventory, located at 9989 Folsom Boulevard, Rancho Cordova, CA 95826 and more fully described in the debtor's Schedule B-29 (Dkt. 1, p.14-15) (collectively, the "Property") in an "as-is" and "where-is" condition to GMSSL Inc. for \$7,500.00 pursuant to the terms of the Sale Agreement filed as Exhibit "B" to the motion (Dkt. 82, p.5). The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms approved by the court at the hearing.

The trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

Counsel for the trustee shall submit an order that conforms to the foregoing ruling.

27. [12-33980](#)-B-7 LARRY WALLER MOTION FOR ORDER APPROVING
HSM-8 STIPULATION AND/OR MOTION TO
EXTEND TIME
10-23-13 [[90](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The stipulation between the debtor and the chapter 7 trustee (Dkt. 93) is approved. Pursuant to the approved stipulation, the deadline for the chapter 7 trustee to file an objection to the debtor's claims of exemptions is extended to December 23, 2013.

The chapter 7 trustee requests an extension of the deadline to file an objection to the debtor's claims of exemptions pursuant to Fed. R. Bankr. P. 4003(b). When a request for an enlargement of time to file an objection to a claim of exemptions is made before the time has expired, as it was here, the court may enlarge the time for cause shown. Fed. R. Bankr. P. 4003(b)(1). Here, the chapter 7 trustee alleges that he and the debtor have entered into an agreement-in-principle which resolves certain disputes that the parties have regarding the exemptions claimed by the debtor on his amended Schedule C (Dkt. 58). The debtor, through his counsel, and the chapter 7 trustee have entered into a stipulation to extend the deadline (Dkt. 93) pending the completion of a formal agreement, which will be subject to bankruptcy court approval. This constitutes "cause" for purposes of Fed. R. Bankr. P. 4003(b).

The court will issue a minute order.

28. [13-32882](#)-B-7 BALTEJ SINGH AND BALJIT MOTION TO COMPEL ABANDONMENT
TOG-4 KAUR 10-22-13 [[10](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter is continued to December 17, 2013 at 9:32 a.m., to be heard after the deadline to object to the debtors' claims of exemptions.

29. [11-36395](#)-B-7 GURJIT JOHL
GJH-3

CONTINUED MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF HUGHES LAW CORPORATION FOR
GREGORY J. HUGHES, SPECIAL
COUNSEL(S), FEES: \$203,823.75,
EXPENSES: \$13,528.75
10-15-13 [[59](#)]

Tentative Ruling: The motion is granted to the extent set forth herein. The application is approved on a first and final basis in the amount of \$203,823.75 in fees and \$13,491.07 in costs, for a total of \$217,314.82, payable to Hughes Law Corporation ("Hughes") as a chapter 7 administrative expense only from settlement funds are received by the estate. Except as so ordered, the motion is denied.

On June 30, 2011, the debtor filed a chapter 7 petition. By order entered on October 23, 2013 (Dkt. 67), the court authorized the chapter 7 trustee to retain Gregory J. Hughes of Hughes as special counsel for the chapter 7 trustee in this case with an effective date of employment of September 4, 2011. The applicant now seeks compensation for services rendered and costs incurred on the basis of a 33.3 percent contingency fee, as set forth in the order authorizing the applicant's employment, for the period of January 1, 2012 through October 7, 2013. Hughes has agreed that payment of any fees and costs due to it is contingent upon successful receipt of the funds by the estate. The requested fees and costs are approved in full, with the exception of \$37.68 requested for costs incurred by Hughes on October 8, 2013. The court does not approve fees and costs that are incurred outside of the period specified in the employment application. As such, the award for costs is reduced to \$13,491.07. As set forth in the application, the approved fees costs are reasonable compensation for actual, necessary and beneficial services. 11 U.S.C. § 330(a) (1).

The court will issue a minute order.

30. [11-36395](#)-B-7 GURJIT JOHL
JAT-3

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GURJIT SINGH
JOHL
11-7-13 [[75](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f) (2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is dismissed.

The motion is dismissed because RBC Real Estate Finance, Inc. (the "Creditor") has failed to show that it has prudential standing to bring the motion. By this motion, the Creditor seeks to settle its adversary proceeding against the debtor-defendant, case no. 12-02068, that was filed to

determine whether a debt arising from a state court judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(2) and (a)(6). Fed. R. Bankr. P. 9019(a) makes clear that "on motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a).

Creditor cites In re Guy F. Atkinson Co., 242 B.R. 497 (9th Cir. BAP 1999), which stands for the proposition that an entity other than the trustee may settle claims on behalf of the estate under certain circumstances. Specifically,

Two prerequisites must be met before an entity other than the trustee is empowered to settle claims on behalf of the estate. First, the Ninth Circuit has allowed individual creditors to act in lieu of the trustee 'when sufficient reason exists[.]' Sufficient reason has been found to exist when the creditor is pursuing interests common to all creditors; where the third party is appointed for the purpose of enforcement of the plan; where the trustee has no economic incentive to pursue a claim; or where the trustee or debtor in possession has failed to fulfill the duty to prosecute actions on behalf of the estate.

...

Second, when an entity is pursuing a claim other than a § 506(c) claim, the entity's interests and incentives in settling the claims must be consistent with maximizing the estate for all creditors. At its base, the approval of a settlement turns on the question of whether the compromise is in the best interests of the estate. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986).

In re Guy F. Atkinson Co. of California, 242 B.R. 497, 502 (9th Cir. BAP 1999).

Creditor's reliance on In re Guy F. Atkinson Co. is misplaced. Creditor is not trying to settle "claims on behalf of the estate." It is trying to settle its personal claim against the debtor.

The court notes that even if the Creditor had standing, the motion would be denied without prejudice because it fails to provide proper notice to parties in interest as is required by the Federal Rules of Bankruptcy Procedure. Fed. R. Bankr. P. 2002(a)(3) requires that the debtor, trustee, and all creditors be provided at least twenty-one (21) days' notice of "the hearing on approval of a compromise or settlement of a controversy." Fed. R. Bankr. P. 2002(a)(3). The date of this hearing is November 26, 2013. Twenty-one days prior to the hearing date was November 5, 2013. Parties in interest were served with notice of the hearing on November 7, 2013, which is only nineteen (19) days prior to the hearing date. As such, proper notice of the hearing was not provided in this instance.

The court will issue a minute order.

31. [13-32150](#)-B-7 THOMAS THOMAS
JME-1

MOTION TO AVOID LIEN OF
CITIBANK (SOUTH DAKOTA) N.A.
10-27-13 [[18](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of CitiBank (South Dakota) N.A., recorded in the official records of Sacramento County, Book No. 20111205, is avoided as against the real property located at 3732 Kings Way, Sacramento, CA 95821.

The subject real property has a value of \$192,384.00 as of the date of the petition. The unavoidable liens total approximately \$191,809.40. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1) under which he exempted \$574.60. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

The court will issue a minute order.

32. [13-27856](#)-B-7 ARTHUR LUND
SLF-4

MOTION TO EMPLOY FIRST CAPITOL
AUCTIONEER AS AUCTIONEER(S)
10-29-13 [[37](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Fed. R. Bankr. P. 2014, the chapter 7 trustee is authorized to employ First Capitol Auction, Inc. ("First Capitol") as auctioneer for the trustee on the terms and for the purposes set forth in the motion. The chapter 7 trustee is also authorized to pay First Capitol, as a chapter 7 administrative expense, a commission of five percent (5.00%) of the net sales proceeds from the sales it is being employed to complete as well as costs not to exceed \$500.00. Except as so ordered, the motion is denied.

The court finds that First Capitol is a disinterested person as that term is defined in 11 U.S.C. § 101(14). As set forth in the motion, the approved fees are reasonable compensation for actual, necessary and beneficial services to be performed.

Counsel for the trustee shall submit an order approving employment and compensation of Mr. Brazeal that is consistent with this ruling.

33. [13-27856](#)-B-7 ARTHUR LUND
SLF-5

MOTION TO SELL
10-29-13 [[42](#)]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee is authorized to sell the personal property of the estate listed in the motion (Dkt. 42, p.2-3) (the "Property") in an "as-is" condition at public auction, as described in the motion. The trustee is authorized to execute all documents necessary to complete the approved sale. Except as so ordered, the motion is denied.

The trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

The court will issue a minute order.

34. [12-33558](#)-B-7 DENNIS/BARBARA GYLES
MPD-2

CONTINUED MOTION TO SELL AND/OR
MOTION TO PAY , MOTION TO
APPROVE PAYMENT OF A BUYER'S
PREMIUM TO THE BANKRUPTCY
ESTATE
10-15-13 [[26](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. The trustee seeks court approval to short sell real property located at 8972 Sierra Street, Elk Grove, CA 95624 (the "Property") to Huong Phan and Sopheap Nhieu for \$92,000.00 in cash with a \$15,000.00 buyer's premium to be paid by the purchasers. In this case, Nationstar Mortgage, LLC ("Nationstar") holds a lien against the Property in the amount of \$229,115.00. The trustee has not provided proof that this lienholder consents to the proposed short sale.

The absence of an actual compromise or sale for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual compromise or sale agreement to which the lienholders agree, no case or controversy within the meaning of Article III exists.

The court acknowledges that the trustee has filed an approval letter from Nationstar (Dkt. 29, p.29). However, according to this letter, Nationstar's approval of the short sale is contingent upon the closing occurring on or before November 4, 2013 at 12:00 p.m. It is now November 12, 2013. There is no evidence before this court that a sale closed prior to the November 4 deadline, or that Nationstar has consented to an extension of the deadline. As such, the trustee has failed to provide

proof that Nationstar has consented to the proposed short sale, and there is not an actual short sale for the court to approve.

The court will issue a minute order.

35. [11-47359](#)-B-7 BEN/DOROTHY LIKENS MOTION FOR COMPENSATION BY THE
DNL-4 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S), FEES: \$4,147.00,
EXPENSES: \$241.41
10-24-13 [[52](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$4,147.00 in fees and \$241.41 in expenses, for a total of \$4,388.41, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on May 31, 2012 (Dkt. 24), the court authorized the chapter 7 trustee to retain Desmond, Nolan, Livaich & Cunningham ("DNLC") as general bankruptcy counsel in this case, with an effective date of employment of May 7, 2012. The trustee now seeks compensation for services rendered and costs incurred by DNLC during the period of May 7, 2012, through October 15, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

36. [12-21759](#)-B-7 JORGE/BONITA NOGALES MOTION FOR COMPENSATION BY THE
DNL-7 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S), FEES: \$15,530.50,
EXPENSES: \$522.29
10-28-13 [[85](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$15,530.50 in fees and \$522.29 in expenses, for a total of \$16,052.79, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on March 7, 2012 (Dkt. 23), the court authorized the chapter 7 trustee to retain Desmond, Nolan, Livaich & Cunningham ("DNLC") as general bankruptcy counsel in this case, with an effective date of

employment of February 10, 2012. The trustee now seeks compensation for services rendered and costs incurred by DNLC during the period of February 10, 2012, through October 17, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

37. [10-24160](#)-B-7 ANTHONY/KATHERINE ZUNIGA MOTION TO ABANDON
DNL-10 10-25-13 [[104](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

Pursuant to 11 U.S.C. § 554(a), the motion is granted, and the estate's interest in a personal injury claim against Federal Mogul PI Settlement Trust (the "Claim") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The chapter 7 trustee alleges without dispute that, when taking into consideration the debtors' claim of exemptions and the costs associated with settling the Claim, the Claim is burdensome to the estate and of inconsequential value and benefit to the estate.

The court will issue a minute order.

38. [10-24160](#)-B-7 ANTHONY/KATHERINE ZUNIGA MOTION FOR COMPENSATION BY THE
DNL-11 LAW OFFICE OF DESMOND, NOLAN
LIVAICH AND CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S), FEES: \$4,729.54,
EXPENSES: \$270.46
10-25-13 [[109](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$4,729.54 in fees and \$270.46 in expenses, for a total of \$5,000.00, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on May 28, 2010 (Dkt. 18), the court authorized the chapter 7 trustee to retain Desmond, Nolan, Livaich & Cunningham ("DNLC") as general bankruptcy counsel in this case, with an effective date of employment of May 7, 2010. The trustee now seeks compensation for services rendered and costs incurred by DNLC during the period of May 7, 2010, through October 10, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

39. [12-20461](#)-B-7 VALERIE BOWEN
JRR-2

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT AND/OR MOTION FOR
COMPENSATION FOR JOHN C.
MAPLES, SPECIAL COUNSEL(S),
FEES: \$105,000.00, EXPENSES:
\$4,446.62., MOTION TO PAY
10-15-13 [[49](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part, and the chapter 7 trustee is authorized to enter into and perform in accordance with the settlement agreement (the "Agreement") attached as Exhibit "A" to the motion (Dkt. 60). The chapter 7 trustee is further authorized to disburse the net proceeds from the Agreement to the consensual medical lienholders listed in the motion to satisfy their claims in the amounts set forth in the motion (Dkt. 49, p.7-8). Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the court approves \$103,871.55.00 in fees and \$4,446.62 in costs, for a total of \$108,318.17, to John C. Maples ("Mr. Maples"), payable from the net proceeds of the Agreement. The court also authorizes a \$1,128.45 disbursement to Berg Attorneys as a referral fee to Mr. Maples, payable from the net proceeds of the Agreement. Any remaining proceeds from the Agreement shall be administered for the benefit of the estate. Except as so ordered, the motion is denied.

Regarding the proposed Agreement, the court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

The chapter 7 trustee alleges without dispute that the Agreement is fair and equitable. The Agreement represents the limits of the insurance policy held by the defendant in the case currently pending in the Sacramento County Superior Court, case no. 34-2012-00123465 (the "State Court Case"). Furthermore, the probability of success at trial is speculative, and the trustee anticipates significant litigation costs if the matter is not settled. The court finds that the Agreement is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the trustee has carried his burden of persuading the court that the proposed Agreement is fair and equitable, and the motion to enter into the Agreement is approved.

Regarding the proposed fees and costs for Mr. Maples, by order entered on July 3, 2013 (Dkt. 44), the court authorized the trustee to retain Mr. Maples as special counsel for the purpose of prosecuting the State Court Case. Mr. Maples now seeks compensation for services rendered and costs

incurred in connection with that litigation. As set forth in the motion, the approved fees and costs are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

40. [08-37464](#)-B-7 GREGORY/GAIL STARK MOTION FOR COMPENSATION BY THE
DNL-6 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
LUKE HENDRIX, TRUSTEE'S
ATTORNEY(S), FEES: \$20,235.01,
EXPENSES: \$764.99
10-25-13 [[96](#)]

Tentative Ruling: The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$19,745.01 in fees and \$764.99 in expenses, for a total of \$20,510.00, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on September 15, 2009 (Dkt. 18), the court authorized the former chapter 7 trustee to retain Desmond, Nolan, Livaich & Cunningham ("DNL") as general bankruptcy counsel in this case, with an effective date of employment of August 31, 2009. Subsequently, by order entered on May 5, 2012 (Dkt. 84), the court authorized the current chapter 7 trustee to retain DNL as general bankruptcy counsel, with an effective date of employment of April 23, 2012. The current chapter 7 trustee now seeks compensation for services rendered and costs incurred by DNL during the period of August 31, 2009, through October 14, 2013. The requested fees are approved with a reduction of \$490.00 for services rendered prior to August 31, 2009. This department does not approve compensation for work done prior to the effective date of a professional's employment. DeRonde v. Shirley (In re Shirley), 134 B.R. 930, 943-944 (B.A.P. 9th Cir. 1992). The requested costs are approved in full. As set forth in the application, the approved fees and costs are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

41. [12-36965](#)-B-7 JOHN/MARCIA RUSSELL MOTION FOR COMPENSATION BY THE
DNL-6 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S), FEES: \$9,260.00,
EXPENSES: \$134.34
10-21-13 [[77](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$9,260.00 in fees and \$134.34 in expenses, for a total of \$9,394.34, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on October 31, 2012 (Dkt. 15), the court authorized the chapter 7 trustee to retain Desmond, Nolan, Livaich & Cunningham ("DNLC") as general bankruptcy counsel in this case, with an effective date of employment of October 17, 2012. The trustee now seeks compensation for services rendered and costs incurred by DNLC during the period of October 17, 2012, through October 14, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

42. [13-26640](#)-B-7 DONNA/HARVEY BILLS
HSM-4

TRUSTEE'S MOTION FOR APPROVAL
OF SALE OF REAL PROPERTY (2024
MILLWOOD AVE, STOCKTON, CA) AND
TO PAY COMMISSION TO REAL
ESTATE BROKER O.S.T.
11-19-13 [[62](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(3)(motions set on shortened time). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.